

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SPARK NETWORKS USA, LLC

Plaintiff,

v.

SMOOCH LABS INC.

Defendant.

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 8/5/15

Civil Action No. 14-cv-09027-LGS

CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER

This Civil Case Management Plan is submitted by the Parties in accordance with Fed. R. Civ. P. 26(f) and Judge Schofield's Order Nos. 44 and 46.

1. This case is subject to the Local Patent Rules of the Southern District of New York, subject to certain provisions of the Eastern District of Texas Local Patent Rules, as set forth in Order No. 44. The Parties' proposed dates in this order have been adjusted accordingly.

2. As set forth below, the Parties have agreed to complete their document productions by August 6, 2015 and for Defendant to produce its source code by August 6, 2015. Further, all fact discovery shall be completed no later than October 14, 2015, and expert discovery shall be completed no later than December 18, 2015. Plaintiff has engaged the following types of experts: subject matter, survey and damages. Defendant will be providing experts prior to the mediation, since new counsel did not inherit experts, and will have experts, on the subjects of subject matter, survey, damages and matchmaking.

3. As set forth in Judge Schofield's Civil Case Management Plan and Scheduling Order, the Parties maintain that:

a. No later than 30 days prior to the completion of all fact discovery, the Parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents, and depositions, provided that (i) expert report(s) of the Party with the burden of proof shall be due before those of the opposing Party's expert(s); and (ii) all expert discovery shall be completed by December 18, 2015.

b. The Parties believe expert depositions may be necessary and reserve their rights to conduct them.

c. This case is to be tried to a jury.

d. Counsel for the Parties have conferred regarding length of trial. The Parties' present best estimate of the length of trial is 3-5 days.

e. The following status letters and conferences have taken, or will take, place:

1. On April 23, 2015, the Parties sent via e-mail a status letter status letter explaining what discovery had taken place, what discovery remained, and how the Parties were acting diligently to meet the discovery deadlines.
2. By 14 days after the close of fact discovery, all counsel must confer to discuss settlement and jointly advise the Court in writing whether or not they request a referral for settlement discussions.
3. By 14 days after the close of discovery, a case management conference shall be held. The conference will serve either as a pre-motion conference for any Party seeking to file a summary judgment motion in the absence of claim construction briefing, or a scheduling conference for trial.
 - i. A Party wishing to file a summary judgment motion in the absence of, or prior to claim construction briefing shall file a pre-motion letter, and any Party wishing to oppose also shall file a letter at the times and in the form provided in the Court's Individual Rule III.A.1. The Court will set the briefing schedule at the conference. The Court will set a firm trial date after a decision on any summary judgment motion.
 - ii. If no pre-motion letters are timely filed, at the Case Management Conference, the Court will set dates for a final pre-trial order, other pre-trial submissions, a final pre-trial conference and trial. The trial date will be firm.

4. The following schedule summarizes the above-identified deadlines.

Civil Case Management Plan Requirement	Amended Proposed Schedule
Plaintiff's Disclosure of Asserted Claims and Infringement Contentions	March 16, 2015
Defendant's Service of Invalidity Contentions	May 1, 2015

Civil Case Management Plan Requirement	Amended Proposed Schedule
Plaintiff to supplement Infringement Contentions pursuant to EDTX Rules	August 5, 2015 Additional supplementation will be permitted once without leave of Court within 30 days after Defendant's production of its source code; subsequent supplementation will be permitted in accordance with EDTX Rule 3-6
Source code and all document production to be completed by no later than	August 6, 2015
Defendant to supplement Invalidity Contentions pursuant to EDTX Rules	August 21, 2015
Simultaneous list of claim terms/phrases/clauses which each Party contends should be construed by the Court	September 30, 2015
All fact discovery, including but not limited to, fact depositions, to be completed no later than	October 14, 2015
Exchange of preliminary proposed constructions, along with preliminary ID of extrinsic evidence	October 20, 2015
Opening Expert Reports due	October 23, 2015
All counsel must confer to discuss settlement and jointly advise the Court in writing whether or not they request a referral for settlement discussions no later than	October 28, 2015
Rebuttal Expert Reports due	November 13, 2015
Joint Claim Construction and Prehearing Statement	November 19, 2015
Reply Expert Reports due	December 4, 2015
All expert discovery to be completed no later than	December 18, 2015
Completion of Claim Construction discovery (including depositions)	December 21, 2015
Opening Claim Construction brief due Opening Summary Judgment briefs due	January 15, 2016
Responsive Claim Construction brief due Responsive Summary Judgment briefs due	February 15, 2016

Civil Case Management Plan Requirement	Amended Proposed Schedule
Reply Claim Construction brief due Reply Summary Judgment briefs due	February 22, 2016
Filing of Joint CC Chart per EDTX Rule 4.5(d)(1)-(3)	February 26, 2016
Claim Construction Hearing	March 7, 2016 March 10, 2016, at 10:30 a.m.
A case management conference shall be held, to serve either as a pre-motion conference for any Party seeking to file a summary judgment motion, or a scheduling conference for trial no later than	January 4, 2016 [The Parties recommend a date following a Claim Construction decision, instead]

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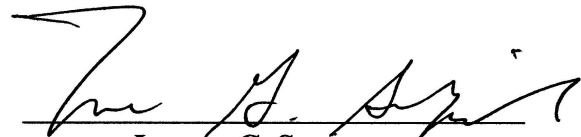
This Order may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein shall be made in a written application in accordance with the Court's Individual Rules and shall be made no fewer than 2 business days prior to the expiration of the date sought to be extended.

The Clerk of Court is directed to enter the dates in paragraph 4 into the Court's calendar. The parties shall submit a status letter no later than August 25, 2015, updating the Court of the status of this action. The parties shall appear for a status conference on January 7, 2015, at 10:30 a.m. The conference scheduled for July 7, 2015, is hereby CANCELED.

SO ORDERED.

Dated: August 5, 2015

New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE